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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,966	12/01/2003	Lee J. Brown	1612	3032
20676	7590	05/16/2007		
ALFRED J MANGELS 4729 CORNELL ROAD CINCINNATI, OH 452412433			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 05/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/724,966	Applicant(s) BROWN, LEE J.	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-18 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed on 02/16/2007. The previously indicated allowability of claims 3 and 17 is withdrawn and the claims are rejected. Accordingly this action is Non-Final.

Response to Arguments

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the cover, 27, of Sasamoto is not a solid, imperforate member) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Objections

Claims 14 and 15 are objected because they recite the limitation of "an inturned end" which lacks antecedent basis in the claims.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5, 8, 10-11, 14-16, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasamoto (JP-2000-17797).

Claim 1: Sasamoto discloses a support bracket (FIG. 1a) comprising:

a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends between the mounting surface and the front surface (FIG. 1);

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover panel 27 to the bracket thus meeting the functional limitation of the claimed bore);

engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and

upwardly-facing flat support surface means (6, 5) for engaging a rear surface portion of the gutter cover panel.

Claim 2: The Sasamoto first leg includes at least two bores spaced from each other along the first leg (two fasteners 24 are extended through two bores in portion 4; FIG. 1).

Claim 4: The Sasamoto engagement means (portion 9) is a hook member adapted to engage a reentrant lip of a gutter.

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Claim 5: The Sasamoto support means (portion 6) is inclined in a downward direction from a plane defined by the mounting surface and extending toward the engagement means.

Claim 8: The Sasamoto second leg carrying a stop surface (the end of element 20, FIG 1) for abutment with and positioning relative to the bracket of a front edge of a gutter cover panel.

Claim 10: The Sasamoto body including at least one aperture (generally indicated at 16) for receiving a fastener.

Claim 11: The Sasamoto at least one aperture is positioned in the first leg (FIG 1).

Claim 14: Sasamoto discloses a support bracket (FIG. 1a) comprising:
a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) fixedly connected to the first leg, the second leg extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends between the mounting surface and the front surface (FIG1);

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

at least one second bore for receiving a cover panel fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore);

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engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and

upwardly-facing flat support surface means (6, 5) for engaging an element above the bracket.

Claim 15: Sasamoto discloses a support bracket (7, 8; FIG. 2a) comprising:

a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends between the mounting surface and the front surface (FIG1);

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

engagement means (the upward vertical portion of 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1);

a contact surface (the horizontal portion of 9) carried by the second leg between the first leg and the engagement means capable of contact with an inturned edge of a cover panel; and

upwardly-facing, flat support surface means (6, 5) for engaging an element above the bracket.

Claim 16: The Sasamoto bracket includes at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore).

Claim 18: The Sasamoto contact surface includes stop (horizontal portion 9 provides a stop of element 25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6-7, 12-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasamoto (JP-2000-17797).

Claims 3 and 17: Sasamoto discloses a support bracket (FIG. 1a) for positioning within a rain gutter that includes an overlying utter cover comprising:

a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter;

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover panel 27 to the bracket thus meeting the functional limitation of the claimed bore);

engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and

upwardly-facing flat support surface means (6, 5) for engaging a rear surface portion of the gutter cover panel.

Sasamoto does not expressly disclose that the second bore is a blind bore. Instead Sasamoto discloses a through-bore. However, the bore is still a bore for receiving a cover fastener. Applicant has not disclosed that having blind bore instead of a through-bore solves any stated problem or is for any particular purpose. Moreover, it appears that the through-bore of Sasamoto, or the blind bore of applicant's invention, would perform equally well with the.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Sasamoto such that the bore was a blind bore because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Sasamoto.

Claims 6 and 7: Sasamoto is silent as to the particular inclination angle of the support means (portion 6, 10). However, it is well settled that the particular size or shape of an element is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed element was significant. In the present case, the claimed inclination

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angle or range is a matter of design choice depending on the particular shape of the gutter cover and sloping an element away from the building was known to one of ordinary skill in the art in order to utilize gravity to better direct rainwater and debris away from the fascia board. Applicant has provided no persuasive evidence that the particular inclination angle was significant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the angle of 90 degrees to be 60-85 degrees, or 75 degrees, in order to slope away from the building and utilize gravity to better direct rainwater and debris away from the fascia board

Claims 12-13: Sasamoto discloses the bracket as in the claims above, wherein the at least one aperture is positioned in the first leg, but does expressly disclose that the at least one aperture is positioned in the second leg or in the first and second leg.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to position the aperture in the second or the first and second leg because applicant has not disclosed that the claimed locations provide an advantage, are used for a particular purpose, or solve a stated problem. Applicant does disclose that having the aperture positioned in the first leg is an acceptable embodiment of the invention. One of ordinary skill in the art, furthermore, would have expected Sasamoto's bracket, and applicant's invention to perform equally well with either the position taught by Sasamoto, and disclosed by applicant or the claimed position in the second or in the first and second legs, because either position would perform the same function of receiving a fastener equally well considering.

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Therefore, it would have been prima facie obvious to modify Sasamoto to obtain the invention as specified in claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Sasamoto.

Allowable Subject Matter

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL
05/01/2007



Jeanette Chapman
Primary Examiner